

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3679 of 1999

to

FIRST APPEAL No 3694 of 1999

cross with

FIRST APPEAL No 5987 of 1999

to

FIRST APPEAL NO.6001 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and

Hon'ble MR.JUSTICE D.P.BUCH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SPL.LAQ OFFICER

Versus

JAGUBHAI MAGANBHAI

Appearance:

First Appeals Nos.3679/99 to 3694/99
Mr.S.S. Patel, AGP, for the appellant
Mr.K.M. Sheth for the respondents

First Appeals Nos.5987/99 to 60001/99

MR KM SHETH for Petitioners

Mr.P.G.Desai, GOVERNMENT PLEADER, for Respondent No. 1

Mr.H.L. Jani for respondent No.2

CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE D.P.BUCH

Date of decision: 01/02/2000

COMMON ORAL JUDGEMENT (Per: Kadri, J.)

1. First Appeals Nos.3679 of 1999 to 3694 of 1999 have been filed by Special Land Acquisition Officer and Executive Engineer, Narmada Project, Main Canal Construction Division I, under Section 54 of the Land Acquisition Act, 1894 (to be referred to as 'Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, challenging common judgment and award dated November 30, 1998, rendered by the learned 2nd Extra Assistant Judge, Panchmahals, at Godhra, in Land Reference Cases Nos. 105 of 1993, 110 of 1993 to 124 of 1993, by which, the Reference Court determined market price of acquired lands of village Kanjari, as on May 2, 1991, at the rate of Rs. 10 per sq.mtr.

2. First Appeals Nos.5987 of 1999 to 6001 of 1999 have been filed by the original claimants against the impugned common judgment and award of the Reference Court as stated above, claiming enhanced compensation at the rate of Rs.20/- per sq.mtr for acquired lands of village Kanjari. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

3. Executive Engineer, Narmada Canal Division, proposed to the Government to acquire lands of village Kanjari, Taluka Halol, District Panchamahals, for public purpose of 'Narmada Main Canal'. The said proposal was scrutinized by the Government and notification to acquire lands of the claimants came to be issued under Section 4(1) of the Act which came to be published in the Government Gazette on May 2, 1991. The land owners filed their objection under Section 5A of the Act against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Kanjari which were

specified in the notification published under Section 4(1) of the Act were needed for the public purpose of Narmada Main Canal. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on October 3, 1991. Interested persons were, thereafter, served with notices under Section 9(3)(4) of the Act for determination of compensation. The claimants claimed compensation at the rate of Rs.20/- per sq.mtr. for the acquired lands of village Kanjari. The Land Acquisition Officer, on the basis of the materials placed before him, made his award on September 23, 1992 and offered compensation to the claimants at the rate of Rs.2.70 per sq.mtr for irrigated lands and Rs.1.80 per sq.mtr for non-irrigated lands. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Panchmahals, at Godhra, which were numbered as Land Reference Cases Nos. 105/93 and 110/93 to 124/93. Before the Reference Court also, the claimants claimed compensation at the rate of Rs.20/- per sq.mtr for their acquired lands of village Kanjari. According to the claimants, the acquired lands of village Kanjari were fertile and the claimants used to raise crops of paddy, millet, groundnut etc. It was claimed in the applications that acquired lands were having facility of irrigation and agricultural operations were carried out by latest and modern technology and each claimant was earning Rs.6700/as net income per bigha yearly from the crops raised on the acquired lands. It was further claimed by the claimants that Halol taluka was well developed having industrial zone, education facilities, cooperative societies, ST bus, and was connected with road to other parts of the State of Gujarat. The appellants filed their written objections against the reference applications at Exh.25, inter alia, contending that the claimants had not produced any evidence before the Land Acquisition Officer for fixing market price of acquired lands and the market price fixed by the Land Acquisition Officer was just and adequate looking to the situation and fertility of the acquired lands. It was also averred that the award declared by the Land Acquisition Officer was based on relevant data collected by him and the said award did not require any interference by the Reference Court. The appellants, therefore, prayed that the Reference Applications be dismissed with costs.

4. On the basis of rival assertions made by the parties, the Reference Court raised issues at Exh.25. To substantiate their claim, on behalf of the claimants, one Balwantsinh Samantsinh, claimant of Land Acquisition Reference No.121/93, was examined at Exh.34. On behalf of the appellants, Assistant Executive Engineer, Krishnakant Vitthaldas Mehta, was examined at exh.36. The claimants produced documentary evidence in support of their claim of Rs.20/- per sq.mtr as compensation for the acquired lands. The claimants produced certified copies of the previous awards of the Reference Court and judgment of the High Court rendered in First Appeals Nos.2881 of 1995 to 2891 of 1995 decided on May 6, 1997. The claimants also placed on record judgment of the High Court rendered in First Appeals Nos.910 of 1997 to 924 of 1997 decided on May 8, 1997. On overall appreciation of oral as well as documentary evidence, and the arguments advanced by the learned counsel for the parties, the Reference Court determined market price of acquired lands at the rate of Rs.10 per sq.mtr. which has given rise to filing of appeals by Special Land Acquisition Officer and Executive Engineer, Narmada Project Main Canal Construction Division I. The claimants have challenged the impugned common judgment and award by filing appeals and have claimed enhanced compensation at the rate of Rs.20/- per sq.mtr. minus the compensation awarded by the Reference Court.

5. Mr. P.G. Desai, learned Government Pleader, assisted by Mr.S.S. Patel, learned Assistant Government Pleader, for the appellants, has vehemently argued that the claimants had not led sufficient evidence to prove that the lands, which were subject matter of previous awards, were comparable with the present acquired lands. Learned counsel for the Government submitted that previous award of the Reference Court rendered in respect of agricultural lands of village Kanjari is neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of the lands acquired in the present case. Learned Counsel for the Government further submitted that the Reference Court, in absence of any evidence, was not justified in determining market price of the acquired lands of village Kanjari at the rate of Rs.10/- per sq.mtr. Learned counsel Mr. H.L. Jani, appearing for Executive Engineer, Narmada Project, Main Canal Division, has adopted the arguments advanced by learned Government Pleader.

6. Learned counsel for the claimants has submitted

that the claimants had led sufficient evidence to prove that the lands which were acquired in the years 1984 and 1988 of the same village were, in all respects, comparable and having similar fertility, and the previous award of the Reference Court rendered in respect of agricultural lands of village Kanjari is comparable as well as relevant for the purpose of determining market value of the lands acquired from same village Kanjari, because they were having same fertility and were adjoining to the present acquired lands. Learned counsel for the claimants further submitted that village Kanjari was having facilities of electricity, telephone, cooperative societies, school, nationalised banks, etc. Learned counsel for the claimants further submitted that industrial zone set up by the GIDC was at a distance of 1 k.m. from the acquired lands, and village Kanjari was connected with road and rail with other parts of State of Gujarat and, therefore, the claimants were entitled to compensation for acquired lands at Rs.20/- per sq.mtrs.

7. We have heard learned counsel for the parties at length, and we have gone through the entire record produced in the Reference Court. We have also taken into consideration relevant documents as well as oral evidence submitted by learned counsel for the parties for our perusal before deciding this group of appeals.

8. The claimants' witness, Balvantsinh Samantsinh, Exh.34, described situation of the acquired lands by deposing that the claimants used to raise three crops in a year on acquired lands. He further deposed that acquired lands were having high fertility and having irrigation facility. He claimed that the agriculturists were raising crops of paddy, cotton, tuwer, wheat, corn, etc. and were earning income of Rs.5,000 to Rs.7,000 per bigha per year. The witness produced extracts of 7/12 forms in support of the claim that the agriculturists used to raise three crops in a year. The witness, during his deposition, produced certified copy of previous award of the Reference Court at Exh.31, wherein, for the acquired lands of same village as on September 11, 1986, the Reference Court had determined market price at the rate of Rs.13/- per sq.mtr. The witness also produced certified copy of the judgment and award of the Reference Court, wherein, for acquired of lands of same village in the year 1984 the Reference Court had determined market price at the rate of Rs.14/- per sq.mtr. The witness claimed that the present acquired lands were having same fertility compared to acquired lands of previous awards. The witness admitted during his cross examination that the agriculturists had not maintained books of account to

show income from the crops at Rs.5000/- to Rs.7000/- per bigha. The witness denied that there was no development surrounding village Kanjari.

9. Assistant Executive Engineer, Mr. K.V. Mehta, Exh.36, deposed that lands of village Kanjari were acquired for GIDC and for public purpose of 'Narmada Main Canal'. He deposed that industrial zone was situated at a distance of 5 kms from village Kanjari. He admitted in cross examination that village Kanjari was connected with pucca roads and was having facility of electricity. In cross examination, the witness admitted that the acquired lands, which were subject matter of previous awards, were having same fertility of the present acquired lands.

10. Thus, from the oral deposition of the witnesses examined by the claimants and the appellants, it becomes evident that village Kanjari was having facilities of electricity, water, telephone, schools, banks, etc. and was connected by rail and road with other parts of the State of Gujarat. The oral evidence of the witnesses also indicates that right from 1984 the agricultural lands of village Kanjari were acquired for the public purposes of laying Narmada Main Canal and for establishment of industrial zone by GIDC. This indicates that there was heavy pressure on the lands of village Kanjari because of development and due to acquisition for Narmada Main Canal. It must be stated that the lands of village Kanjari were earlier acquired by notification issued under Section 4(1) of the Act on October 4, 1984 and the market price of agricultural lands of village Kanjari was determined by the Reference Court at the rate of Rs.14/per sq.mtr which came to be reduced by the High Court to Rs.11/- per sq.mtr by judgment and order dated May 6, 1997, rendered in First Appeals Nos.2881 of 1995 to 2891 of 1995. Agricultural lands of village Kanjari were acquired by notification under Section 4(1) of the Act on September 30, 1988 for public purpose of development of Halol Industrial Complex. For the said acquisition, the Land Acquisition Officer had fixed market price at the rate of Rs.4.50 per sq.mtr which was enhanced to Rs.17.50 ps per sq.mtr by the Reference Court. The said award of the Reference Court was challenged by the acquiring body, namely, GIDC, by filing First Appeal No.2450 of 1997, which came to be summarily dismissed by Division Bench of this Court (Coram: J.M. Panchal & R.P. Dholakia, JJ.) by judgment and order dated July 23, 1999, and determination of market price of acquired lands of village Kanjari as on September 30, 1988, at the rate of Rs.17.50 ps was confirmed.

11. The claimants made a faint endeavour before the Reference Court for the purpose of determination of market value of the acquired lands on the basis of 'yield method', but they could not produce documentary evidence in support of their claim on the basis of 'yield method'. Therefore, the Reference Court was left with no other alternative but to take help of previous award for the purpose of determination of market price of acquired lands of village Kanjari. As mentioned above, lands of village Kanjari were acquired in the year 1984 and the market price of acquired lands of village Kanjari in the year 1984 was determined at Rs.11/- per sq.mt. Determination of market price of acquired lands of village Kanjari at the rate of Rs.11/- per sq.mtr. had become final and the counsel for the appellants has not brought to the notice of this Court that determination of market price of acquired lands of village Kanjari at the rate of Rs.11/-per sq.mtr. was challenged in the Supreme Court. Agricultural lands of village Kanjari again came to be acquired in the year 1988 for the public purpose of development of Halol Industrial Complex wherein notification under Section 4(1) of the Act came to be published in the Government Gazette on September 30, 1988. The Land Acquisition Officer had fixed price of those acquired lands at Rs.4.50 ps per s.qmtr and the Reference Court had enhanced market value of acquired lands at Rs.17.50 per sq.mtr minus Rs.4.50/- per sq.mtr awarded by the Special Land Acquisition Officer. The said award of the Reference Court was challenged by the acquiring body, namely, GIDC, by filing First Appeal No.2450 of 1997, which came to be summarily dismissed by Division Bench of this Court (Coram: J.M. Panchal & R.P. Dholakia, JJ.) by judgment and order dated July 23, 1999, and determination of market price of acquired lands of village Kanjari as on September 30, 1988, at the rate of Rs.17.50 ps was confirmed. It is not pointed out by learned counsel for the appellants and acquiring body that the said judgment of the Division Bench was challenged in the Supreme Court. Therefore, it becomes evident that market price fixed for acquired lands of village Kanjari as on September 30, 1988 at the rate of Rs.17.50 per sq.mtr had become final.

12. In the present appeals, agricultural lands of village Kanjari were acquired by notification issued under Section 4(1) of the Act on May 2, 1991, Therefore, there was a gap of nearly three years between issuance of notification under Section 4(1) of the Act. The claimants had not led any sufficient evidence to prove that there was rise in price of agricultural lands of village Kanjari after the year 1988. For determination

of market value of lands which were subsequently acquired, reliance can be placed on the previous award but the claimants should lead cogent and sufficient evidence to prove that situation and fertility were similar between two acquired lands and the price of agricultural lands of village Kanjari was rising every year. In absence of any evidence adduced by the claimants, we do not find it proper to give rise in price every year in respect of agricultural lands of village Kanjari after the year 1988. Learned Government Pleader for the appellants, however, vehemently submitted that the present acquired lands of village Kanjari were not similarly situated as compared to the acquired lands which were subject matter of First Appeal No.2450 of 1997, wherein, the Division Bench of this Court had determined market value of acquired agricultural lands of village Kanjari at Rs.17.50 ps per sq.mtr. We don not find any merit in the submission of learned Government Pleader for the appellants, because it was not proved before the Reference Court that the lands, which were subject matter of First Appeal No.2450 of 1997, were more fertile than the present acquired lands.

13. Learned Government Counsel for the appellants has also faintly submitted that, in absence of any evidence adduced by the respondents, the matters may be remanded back to the Reference Court for determination of market value of the acquired lands and the parties can lead evidence afresh. In our opinion, the submission of learned Government Counsel does not deserve merit and is hereby rejected. The Supreme Court, in K. Krishna Reddy vs. The Special Deputy Collector, Unit II, LMD, Karimnagar, AIR 1988 Supreme Court 2123, laid down principle that the appellate court should not ordinarily exercise power of remand lightly, and, unless the evidence is totally lacking, the order of remand should not be passed. In our opinion, this is not a case of lacking of total evidence before the Reference Court and we are of the opinion that no useful purpose will be served by remitting the matters to the Reference Court at all. As indicated in the foregoing paragraphs, the Reference Court had awarded Rs.17.50 ps per sq.mtr for agricultural lands acquired for the purpose of development of Halol Industrial Complex by notification under Section 4(1) of the Act on September 30, 1988 and the same came to be confirmed by the Division Bench of the High Court (Coram: J.M. Panchal & R.P. Dholakia, JJ.) by judgment and order dated July 23, 1999 rendered in First Appeal no.2450 of 1997. It is settled legal principle that earlier awards also can be relied upon and they furnish good guide for the purpose of determination

of market price of the lands acquired subsequently. The respondents had led sufficient evidence to establish that the acquired lands of earlier award in all respects comparable with the present acquired lands, and to determine a fair and just compensation to the claimants for their acquired lands. It is further held by the Supreme Court in K. Krishna Reddy (supra) as under:

"Remand means another round of litigation. There would be further delay in getting the compensation. After all money is what one buys. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charm and utility of compensation. In some cases, the delay may be detrimental to the interest of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time."

In the case of Ashwinkumar K. Patel vs. Upendra J. Patel and others, (1999) 3 Supreme Court Cases 161, the Supreme Court ruled that when there is sufficient evidence before the Court, generally, no remand should be ordered under Order 41 Rule 23 of the Code of Civil Procedure. The mandate of Section 23 of the Act is to see that the affected person in an acquisition proceeding is placed in the same position, as far as possible, as he would have been, had there been no acquisition. So, the ultimate purpose and policy enshrined in Section 23 of the Act is to see that the affected person or owner of the property acquired should get fair and just amount of compensation. We, therefore, thought it fit not to remand the cases to the Reference Court, and, instead, have taken help of previous awards of the Reference Court and the High Court for the purpose of determination of market value of the acquired lands of village Kanjari in the present case.

14. As noted above, for the agricultural lands of village Kanjari, which were acquired in the year 1988, market value was determined at the rate of Rs.17.50 per sq.mtr. which had become final as it was not challenged before the Supreme Court. In our opinion, the earlier award of the Reference Court, which had become final by the judgment and order of this Court in First Appeal No.2450 of 1997, is relevant for the purpose of determination of market price of the present acquired

lands of village Kanjari. Acquired lands in both the proceedings were of the same village Kanjari and we noticed from the judgment and order of the Division Bench of this Court that the agricultural lands of village Kanjari were fertile in nature and the agriculturists used to raise three crops in a year. Bearing in mind the fertility and situation of the acquired lands of village Kanjari, in our opinion, it would be just, reasonable and adequate to determine market price of the acquired lands of village Kanjari at Rs.17.50 ps per sq.mtr. and, therefore, the award of the Reference Court deserves to be modified to the extent that the claimants would be entitled to enhanced compensation of the acquired lands at Rs.17.50 ps per sq.mtr. minus the amount awarded by the Reference Court and the Land Acquisition Officer. The claimants would also be entitled to all the statutory benefits under Section 23(2) and 23(1-A) and interest under Section 28 of the Act.

15. As a result of foregoing reasons, First Appeals Nos.3679 of 1999 to 3694 of 1999 filed by the Special Land Acquisition Officer and Executive Engineer, Narmada Project, Main Canal Construction, are dismissed with no order as to costs.

16. First Appeals Nos.5987 of 1999 to 6001 of 1999 filed by the original claimants are partly allowed. It is held that the market value of the acquired lands of village Kanjari on the relevant date was Rs.17.50 ps per sq.mtr. The common judgment and award dated November 30, 1998, rendered by the learned 2nd Extra Assistant Judge, Panchmahals, at Godhra, in Land Reference Cases Nos. 105 of 1993, 110 of 1993 to 124 of 1993, is modified to the extent that the claimants would be entitled to enhanced compensation of the acquired lands of village Kanjari at Rs.17.50 ps per sq.mtr. minus the amount awarded by the Reference Court and the Land Acquisition Officer, with all the statutory benefits under Sections 23(2) and 23(1-A) and interest under Section 28 of the Act. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

(swamy)